HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY

Writ Appeal No.157 of 2007

Between:

Erappa

... Appellant

And

The Joint Collector, Sanga Reddy,
Medak District & others.

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri P. Sreedhar Reddy

February 20, 2007

Per G.S. Singhvi, CJ

Having failed to persuade the learned Single Judge to quash orders dated 13-9-1994 and 30-10-1995 passed by Revenue Divisional Officer, Sanga Reddy (respondent No.2 herein) and Joint Collector, Medak (respondent No.1 herein), the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The Facts:

On an application made by the appellant under Section 10 of

the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the Act') for grant of occupancy right in respect of Ac.11-21 gts. and Ac.2-32 gts of land situated in Survey Nos.35 and 36 in Ginyarpally Village of Jharasangam Mandal, respondent No.2 issued notice in Form No.II under

Rule 6 (1) of the Andhra Pradesh (Telangana Area) Abolition of Inams Rules, 1975 inviting claims and objections from interested persons. Smt. V. Govindamma, daughter of Sri Laxmanna and Kaalamma and wife of the appellant (respondent No.3 herein) and Sri V. Veeranna (son of the appellant and respondent No.3) (hereinafter described as respondent No.4) filed their objections. Respondent No.3 also filed a separate petition for grant of occupancy rights.

After considering the pleadings and evidence produced before him, respondent No.2 passed order dated 13-9-1994, whereby he rejected the appellant's claim and directed that patta be issued in favour of respondent No.3 in respect of the Inam land belonging to her mother - Kaalamma. Respondent No.2 noted that as per the village records, in the pahanis for the years 1971-72 to 1988-89, the land in question was recorded in the name of Smt.Kaalammma W/o.Laxmanna as an Inamdar; that the appellant was already married and had a son got; that later on, he married respondent No.3 – Smt.Govindamma and had a son from her; that on the basis of his occupation of the property of the Inamdar for sometime, the appellant was not entitled to get occupancy rights and that respondent No.3 had legitimate claim for grant of such right. On appeal, respondent No.1, after a threadbare analysis of the factual matrix of the case and evidence produced by the parties, confirmed the finding recorded by respondent No.2. Respondent No.1 observed that even though the appellant had claimed himself to be illitam son-in-law of Smt.

Kaalamma, he had not produced any evidence to substantiate the same and that the story put forward by him regarding execution of Will in his favour by Smt.Kaalammma had remained unsubstantiated. Respondent No.1 also disbelieved the story put forward by the appellant that respondent No.3 – Smt.Govindamma had gone in adoption to the sister of Smt. Kaalammma, married Shri Brahmaiah and after his death, he performed Udiki marriage with her. In the opinion of respondent No.1, illitam son-in-law does not get any right in the property of his in-laws, which devolves to the blood relations and, as such, only respondent No.3 was entitled to occupancy rights. The relevant portions of the appellate order dated 30-10-1995 read as under:

> "Perused the order dt.13.9.94 passed by the RDO, Sangareddy in File No.4/Inams Case/60/87 in which the RDO Sangareddy has finally said that as seen from the revenue record Smt. Kalamma was the inamdar and was in possession and enjoyment of the land till her death and afterwards it continued in her name, the appellant as cultivator till 1985 and from 1985-86 onwards the appellants, respondent No.2 and Biichhanna are recorded as occupants. The RDO has therefore ordered that patta in respect of the Inam land in question be granted in favour of Smt.Govindamma daughter of the inamdar leaving the other issue between the parties to be decided in the civil court. A perusal of the connected file No.B4/imams/60/87 of the RDO Sangareddy shows that Smt.Kalamma was the inamdar and was in possession and enjoyment of the suit land till her death. According to the petitioner appellant, Smt.Govindamma had gone in adoption but either before the RDO Sangareddy or in this Court no such adoption document is produced. Similarly the petitioner appellant claims himself to be illatom son in law of Smt. Kalamma but even in his case also he did not produce any such document in proof. In the whole proceedings of the case no regd. Document is produced either before the RDO Sangareddy or in this Court. It is a point to be noted that the

petitioner Sri Erappa claims that he is illatom son in law in the house of Smt.Kalammma, but on the other hand he himself admits that the only daughter of Kalamma namely Govindamma (R2 hererin) had gone in adoption to Chilamamidi (v) in the house of Kalamma's sister Eramma. For the purpose of getting as illatom son in law it is quite necessary that a daughter must be available in the house but herein in this case the only daughter of the house had already gone to other house before Sri Erappa is alleged to have been brought which is neither possible nor acceptable. As a matter of fact, the petitioner appellant is a stranger to the family of Kalamma whereas Govindamma (R2) is real and only daughter of Kalamma. As argued by the counsel for the respondents, as per Hindu Law the illatom son in law does not get any right in the property of his in-laws. Thus, the only legal heir of blood relation according to the Hindu Succession Act in this case remains is Govindamma (R2) to get the properties of Kalamma as real daughter. All other documents including the alleged will deed have not been accepted by the respondents and their counsel and have been challenged to have been prepared for the purpose of knocking away the properties of the respondents.

Even though there is no clear discussion in the order but it appears that keeping all the above litigations in view and consideration the lower court (RDO Sangareddy) has passed the order under appeal in favour of Smt.Govindamma being the real daughter of Kaalammma granting ownership of the suit land and left all other issues to be got decided from Civil Court. I do not finid any reason to interfere in the orders of the lower court passed on 13.9.94 in File No.B4/Inams Case/60/877 and accordingly dismiss the appeal. The stay granted by this court in order No.J/99/Inams/94, dt.15.12.94 is vacated."

The appellant challenged orders dated 13-9-1994 and 30-10-1995 in Writ Petition No.26771 of 1995, which was dismissed by the learned Single Judge vide order dated 19-9-2006. The learned Single Judge held that the findings recorded by respondent

Nos.1 and 2 are concurrent findings of fact and observed:

> "Though, the fact that the 3rd respondent herein is the 2nd wife of the writ petitioner is not disputed, it is contended by the respondents 3 and 4 that the petitioner has been living separately along with his first wife and children and that he has nothing to do with the land in question. Having considered the documents produced by both the parties, the respondents 1 and 2 recorded clear findings that the 3rd respondent – Govindamma is the only legal heir and that she is also continuing in possession and, therefore, she alone is entitled for the grant of occupancy rights. As a matter of fact, the 3rd respondent also filed an application for grant of occupancy rights. Though the writ petitioner pleaded that Govindamma was given in adoption to the sister of Kalamma and therefore she cannot claim to be the legal heir of the inamdar, in the absence of any material to establish the said plea, the same was disbelieved by t he respondents 1 and 2. as rightly observed by the 1st respondent, the said plea of the writ petitioner runs counter to his own version that having married the 3rd respondent, he had gone go Giniyarpalli village as an illatom son-in-law. In the circumstances, as rightly held by the respondents 1 and 2, being the only surviving legal heir of inamdar, the 3rd respondent alone is entitled for grant of occupancy certificate. Since the Will said to have been executed by the inamdar, on which the petitioner relied upon, was disputed by the respondents 3 and 4, it is for the petitioner to establish title, if any, acquired by him by working out appropriate remedy as available under law. The respondents 1 and 2 have rightly declined to take into consideration the said Will, which was disputed by the rival claimants."

Shri P. Sreedhar Reddy, learned counsel for the appellant made serious efforts to persuade us to reverse the concurrent findings recorded by respondent Nos.2 and 1 by arguing that both the authorities misread the evidence produced by the appellant in

support of his claim for grant of occupancy rights, but we have not felt impressed. Rather, we are convinced that even though the order recorded by respondent No.2 was rather brief, the detailed analysis of the facts and evidence made by respondent No.1 does not suffer from any legal infirmity and the learned Single Judge rightly refused to interfere with the orders made in the writ petition.

The parameters laid down by the Supreme Court for exercise of the High Court's power under Article 226 to issue a writ of certiorari are well-settled. A writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/ factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and

adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the High Courts' power to issue a writ of certiorari and held:

> A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.
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> A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the

Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Surya Dev Rai v. Ram Chander Rai**[2] the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
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> The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
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> In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of

jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

We may now advert to order dated 30-10-2005, a perusal of which shows that the appellant's claim for occupancy rights was entirely based on his having become illitam son-in-law of Smt. Kaalamma and the alleged Will executed by her in his favour.

Respondent No.1 disbelieved the version of the appellant because there were inherent contradictions in the case set up by him. Respondent No.1 noted that the appellant had not produced any evidence to show that respondent No.3 – Smt. Govindamma had gone in adoption to the sister of Smt.Kaalamma and that he was taken as illitam son-in-law by the inamdar. In the opinion of respondent No.1, the theory of the appellant having been taken as illitam son-in-law is belied by his own assertion that Smt. Govindamma had gone in adoption to Smt. Kaalamma's sister, namely, Eramma. The officer concerned further observed that as per Hindu customs, the illitam son-in-law does not get any right in the property of his in-laws.

In our opinion, the appellate order does not suffer from any jurisdictional infirmity or error of law apparent on the face of the record and there is no valid ground for interference with the concurrent findings recorded by the competent authorities.

Before concluding, we deem it proper to take cognizance of the averments contained in paragraph 2 of the counter-affidavit filed on behalf of respondent Nos.3 and 4, which read as under:

> "2. I submit that my mother's name is Kaalamma but not Kamalamma. My father's name is Laxmanna, who was the husband of my mother, died after the birth of myself and one son by name, Butchappa. As we were young and our profession being carpentry in the village, my mother brought the petitioner and his wife along with his son to our village to carry on village carpentry (Vadla) work. We were also having the carpentry profession and rights in Chiilomamidi village which is an adjoining village. In order to protect the carpentry occupational rights in the village, the petitioner was brought to carry on the said work while my mother was carrying agricultural operations on our lands in Sy.No.35 (Ac.11.20 gts) and Sy.No.36 (Ac.2.32 gts.) (Chouthai Inam situate at Giniyarrpally village, Jharasangam Mandal. The petitioner is

the native of Singhitham village originally and brought only for the purpose of protecting the carpentry occupational rights in the village. It is absolutely false to say that the petitioner was brought as Illatam son in law and adopted into the family of my mother on the day my mother alone brought the petitioner, his wife and son to our house for the above said purpose so that the occupational service they yield for mutual benefit. It is absolutely false to say that I was given any adoption to my mother's sister at Chillimamidi village and got married to one Brahmaiah who died immediately after marriage. In fact, there was no adoption and there was no such marriage took place. Since we have carpentry occupational rights (Vadla Vruthi) in both the villages and used to reside in the said villages now and then in order to protect our occupational rights (Vadla Vruthi) he was brought into our family. There is absolutely no record to show the proof for such allegations my adoption and marriage. Since I was not keeping good health very often and my brother, Butchappa also died unmarried, my mother was very much worried about my marriage. Under such circumstances, my mother and other elderly relatives prevailed on me to agree for Udki marriage with the petitioner. Under such circumstances, I had to undergo the torture and the 4th respondent was born. It is admitted that in para 2 of the affidavit that we all stayed along with my mother at Giniyarpally. After the death of my father, the lands were mutated in the name of my mother Kalamma. If the contention of the petitioner that he was brought to Illatam son in law and will deed was executed is correct, he could have as well got his name mutated in the revenue records. That itself shows that the alleged will deed is an after thought and fabricated document. Some papers were written at the time when the petitioner was brought to our house and they were only for sharing of the occupational benefits (Vadla Vruthi) but not to become the owner of the entire property to my exclusion. The petitioner agreed for Udki marriage only with a view to usurp our agricultural landed properties, moveable and immovable and he was residing with his wife and son but always not treated me equal to his first wife and due to torture and

> humiliation and threat of life, I had for sometimes to reside at our second village, Chillimamidi. My mother realizing all this was disappointed at the arrogant behaviours and claiming title ownership of lands, house and treating my mother and ourselves as alieners and wanted to get rid of us. Under such disappointed condition only my mother died in the year 1979-80."

In his wisdom, the appellant neither filed rejoinder affidavit nor produced any document to controvert the above reproduced averments. Therefore, the case set up by him that he had acquired occupancy rights cannot but be treated as wholly misconceived and untenable.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.227 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

February 20, 2007

G. V. SEETHAPATHY, J

svs

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[1] AIR 1964 SC 477

[2] AIR 2003 SC 3044